

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. 1:11-cr-0066 (SEB/KPF)
	)	
KENNETH BELCHER,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on May 13, 2011, designating the Magistrate Judge on criminal duty to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on May 10, 2011, and to submit to Judge Barker proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). Proceedings were held March 23, 2012 and March 29, 2012 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.<sup>1</sup>

On March 23, 2012, Mr. Belcher appeared in person with his appointed counsel, William Marsh, before Magistrate Judge Denise K. LaRue. The government appeared by Matt Rinka, Assistant United States Attorney, for Brant Cook, Assistant United States Attorney. U. S. Parole

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<sup>1</sup> All proceedings are recorded by suitable sound recording equipment unless otherwise noted. *See*, Title 18 U.S.C. §3401(e).

and Probation appeared by Holly Barrineau, U. S. Parole and Probation officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. William Marsh, the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Belcher in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Belcher and his counsel who informed the Court that they had read and understood the specifications of violations and waived further reading thereof.

3. Mr. Belcher was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Belcher was advised he would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Belcher was advised he had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Belcher had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation.

7. Mr. Marsh stated that Mr. Belcher would stipulate there is a basis in fact to hold him on the violation of supervised release set forth in the Petition to Revoke Supervised Release. Mr. Belcher orally waived preliminary examination.

The government moved to continue the preliminary hearing and detention hearing, and the same is granted. The defendant was detained, pending further proceedings.

On March 29, 2012, Magistrate Judge Kennard P. Foster reviewed prior proceedings held March 23, 2012, before Magistrate Judge Denise K. LaRue, including the defendant's right to a preliminary hearing. Mr. Belcher appeared in person with his appointed counsel, William Marsh. The government appeared by Brant Cook, Assistant United States Attorney; and Troy Adamson, U. S. Parole and Probation officer, appeared and participated in the proceedings. The following proceedings occurred:

1. Mr. Marsh stated that Mr. Belcher would stipulate there is a basis in fact to hold him on the specifications of violations of supervised release set forth in the Petition.

2. Mr. Belcher, by counsel, stipulated that he committed the specified violations set forth below as in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
<b>1</b>	<b>“The defendant shall not commit another federal, state, or local crime.”</b>  On April 28, 2011, a Charging Information was filed with the Madison County Prosecutor's Office under cause number 48C011104FC000749, charging Kenneth Belcher with Failure to Register as a Class C felon, as he had prior conviction for Failure to Register in Henry County, Indiana, under cause number 33D010906FD0007, in 2009. The Information indicates that between April 11 and April 20, 2011, Kenneth Belcher intentionally failed to

reside at his registered address as required under section I.C. 11-8-8. A warrant was issued for the offender's arrest on April 28, 2011, and he was arrested on the same date. He remains in the Madison County Jail with a \$10,000 bond.

- 2           **“The defendant shall comply with all federal and state sex offender registration laws in any state where he resides, is employed, carries on a vocation or is a student, as directed by the probation officer. The probation officer will provide state officials with any and all information required by the state sex offender registration agency and may direct the defendant to report to that agency personally for additional processing in accordance with state law.”**

The offender has not consistently lived at the residence address which he provided to the Madison County Sex Offender Registry, 2103 E. Lynn Street, Anderson, Indiana.

- 3           **“The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.”**

The offender reported his address as 2103 E. Lynn Street, Anderson, Indiana, on January 22, 2011. Over the course of the next three months, the probation officer received information indicating the offender was living at multiple locations and residences. These residences include that of his mother, who resides with the offender's 16 year-old niece, his sister, who has minor children; his felon girlfriend, who has minor children; and his grandmother, who frequently has her minor great-grandchildren present in the adjacent duplex.

- 4           **“The defendant shall refrain from any unlawful use of a controlled substance.”**

- 5           **“The defendant shall refrain from excessive use of alcohol and shall not purchase possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.”**

- 6           **“The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.”**

The offender submitted a urine screen on January 4, 2010, which tested positive for marijuana.

7                   **“The defendant shall not associate with any person engaged in criminal activity, and shall not associate with any person convicted to a felony unless granted permission by the probation office.”**

The offender has been associating with Amy Roark (DOB: 12-7-77), a convicted felon, who is currently serving a term of state probation. The offender has been repeatedly directed not to have contact with this person. Ms. Roark has two minor children.

8                   **The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for school, training, or other acceptable reasons.”**

The offender has been unemployed throughout approximately five months of supervision and has failed to show a good faith effort to obtain employment.

The Court placed Mr. Belcher under oath and directly inquired of Mr. Belcher whether he admitted violations of the specifications of his supervised release set forth above. Mr. BELCHER stated that he admitted the above violations as set forth above.

Counsel for the parties further stipulated to the following:

- 1)       Mr. Belcher has a relevant criminal history category of V, U.S.S.G. §7B1.4(a).
- 2)       The most serious grade of violation committed by Mr. Belcher constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3)       Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Belcher is 12 months.

- 4) The appropriate disposition of the case would be a sentence of 11 months in the custody of the Attorney General or his designee, with no supervised release to follow.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Kenneth Belcher, violated the specified conditions of supervised release as delineated above in the Petition to Revoke his supervised release. The defendant's supervised release is therefore **REVOKED** as set forth above.

The Magistrate Judge requests that Chris Dougherty, U. S. Parole and Probation officer, prepare for submission to the Honorable Sarah Evans Barker, Judge, as soon as practicable, a supervised released revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Belcher stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Belcher entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate

Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Kenneth Belcher's supervised release.

IT IS SO RECOMMENDED this 29<sup>th</sup> day of March, 2012.

A handwritten signature in black ink, appearing to read 'KF 3/29/12', is positioned above a horizontal line.

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Kennard P. Foster, Magistrate Judge  
United States District Court  
Southern District of Indiana

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U. S. Parole and Probation

U. S. Marshal